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Tenaga Nasional Bhd v Sime Darby Plantation Bhd & Anor (Petronas Gas Bhd, proposed intervener)

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(IM)-67–02 OF 2023
SUPANG LIAN, COLLIN SEQUERAH JJCA AND FAIZAH JAMALUDIN J
24 SEPTEMBER 2024

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Civil Procedure — Intervener — Right to intervene — Whether proposed intervener at appellate stage had shown its legal rights would be adversely affected if it was not heard during the determination of the appeal — Whether decision in appeal would, on principle of stare decisis, determine whether or not intervener would have right to be heard in other pending proceedings before the courts — Whether proposed intervener would suffer grave injustice if its application to intervene was refused

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The State Authority had acquired lands belonging to the first respondent ('SDPB') under the Land Acquisition Act 1960 ('the LAA') for the appellant ('TNB') to lay a power transmission line. In a separate land acquisition exercise, the State Authority had acquired lands belonging to SDPPSB to enable Petronas Gas Bhd ('PGB') to lay a gas pipeline. Both acquisitions were for a public purpose under s 3(1)(b) of the LAA, and in both cases, the paymasters for the acquisitions were the parties for whom the lands were acquired, namely TNB and PGB, respectively. In the SDPB land acquisition, the land administrator ('LA') awarded RM1,149,480 as compensation whilst in the SDPPSB land acquisition, the LA awarded RM26,562,783 as compensation. In both cases, the respective land owners were dissatisfied with the awards and applied under Form N of the LAA for the LA to refer their objections to the High Court for determination. Neither TNB nor PGB filed a Form N as they had no objections to the awards. When TNB applied to intervene in the SDPB land reference proceeding, the High Court dismissed the application on the ground that TNB had not filed a Form N. In stark contrast, the High Court allowed PGB to intervene in the SDPPSB land reference proceeding. TNB's instant appeal was against the High Court's dismissal of its intervener application. Separately, SDPPSB filed appeals ('the SDPPSB appeals' — which had yet to be fixed for hearing) against the High Court's allowing of PGB's intervener application. PGB applied to intervene in the instant appeal and simultaneously applied to stay the SDPPSB land reference proceeding pending the outcome of this appeal. PGB also sought for the instant appeal and the SDPPSB Appeals to be heard together. PGB argued that it should be allowed to intervene and be heard in the instant appeal as the

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court's decision would determine whether PGB had a right to be heard both in the SDPPSB land reference proceeding and in the SDPPSB appeals.

Held, unanimously allowing PGB's intervener application and ordering both the instant appeal and the SDPPSB appeals to be heard together by the same Court of Appeal panel:

(1) Pursuant to the doctrine of stare decisis, the general rule was that the Court of Appeal ('COA') was bound by its own decisions except in three cases listed in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718. These were: (a) where the COA's decision was given per incuriam; (b) when faced with a conflict of past decisions of the COA, or a court of co-ordinate jurisdiction, the court could choose which to follow regardless of whether either of the conflicting decisions was an earlier case or a later one; and (c) where its previous decision had been expressly or by necessary implication overruled by the Federal Court, or if its previous decision could not stand with a decision of the Federal Court (see para 53).

(2) Unless any of the three exceptions in *Young v Bristol Aeroplane* applied, the decision of this court in the instant appeal would be binding on the SDPPSB land reference proceeding and the SDPPSB appeals. Hence, PGB's legal rights as a paymaster in the land reference proceeding and the said appeals would be affected by the decision in the instant appeal. If it was decided in the instant appeal that a paymaster who did not file a form N had no right to intervene in the land reference proceeding, then the SDPPSB Appeals must be allowed and the High Court's decision overturned. The reverse would be the effect if this appeal decided the other way around (see paras 55–57).

(3) Given that the decision in this appeal would be binding on the SDPPSB appeals, PGB would suffer injustice if its intervener application was disallowed. PGB's pockets as a paymaster in the SDPPSB land reference proceeding would also be affected if it was denied of a hearing in those proceedings (see paras 58–62).

(4) PGB's presence before this court was necessary to ensure that the subject-matter of the instant appeal — namely, whether a paymaster who did not file a Form N could intervene in a land reference proceeding in the High Court — could be effectually and completely determined and adjudicated upon. It was just and convenient that PGB be added as an intervener in the instant appeal (see paras 63–64).

[Bahasa Malaysia summary

Pihak Berkuasa Negeri telah mengambil tanah milik responden pertama ('SDPB') di bawah Akta Pengambilan Tanah 1960 ('APT') untuk perayu ('TNB') meletakkan wayar transmisi kuasa. Untuk pengambilan tanah yang

berasingan, Pihak Berkuasa Negeri telah memperoleh tanah milik SDPPSB untuk Petronas Gas Bhd ('PGB') meletakkan saluran paip gas. Kedua-dua pengambilalihan adalah untuk tujuan awam di bawah s 3(1)(b) APT, dan dalam kedua-dua kes ini, pembayar untuk pengambilalihan itu adalah pihak-pihak yang mana tanah itu diperolehi, iaitu TNB dan PGB. Dalam pengambilan tanah SDPB, pentadbir tanah ('PBT') menganugerahkan jumlah sebanyak RM1,149,480 sebagai pampasan manakala dalam pengambilan tanah SDPPSB, PBT menganugerahkan jumlah sebanyak RM26,562,783 sebagai pampasan. Dalam kedua-dua kes ini, pemilik tanah masing-masing tidak berpuas hati dengan anugerah tersebut dan memohon di bawah Borang N LAA untuk PBT merujuk bantahan mereka kepada Mahkamah Tinggi untuk penentuan. TNB dan PGB tidak memfailkan Borang N kerana mereka tidak mempunyai bantahan terhadap anugerah tersebut. Apabila TNB memohon untuk intervensi dalam prosiding rujukan tanah SDPB, Mahkamah Tinggi menolak permohonan itu atas alasan TNB tidak memfailkan Borang N. Sebaliknya, Mahkamah Tinggi membenarkan PGB campur tangan dalam prosiding rujukan tanah SDPPSB. Rayuan TNB ini adalah terhadap penolakan Mahkamah Tinggi terhadap permohonan intervensinya. Secara berasingan, SDPPSB memfailkan rayuan ('rayuan SDPPSB' — yang masih belum ditetapkan untuk pendengaran) terhadap Mahkamah Tinggi membenarkan permohonan intervensi PGB. PGB memohon untuk internsi dalam rayuan ini dan pada masa yang sama memohon untuk menangguhkan prosiding rujukan tanah SDPPSB sementara menunggu keputusan rayuan ini. PGB juga memohon agar rayuan ini dan rayuan SDPPSB didengar bersama. PGB berhujah bahawa mereka harus dibenarkan untuk intervensi dan didengar dalam rayuan ini kerana keputusan mahkamah akan menentukan sama ada PGB mempunyai hak untuk didengar dalam prosiding rujukan tanah SDPPSB dan dalam rayuan SDPPSB.

Diputuskan, sebulat suara membenarkan permohonan intervensi PGB dan memerintahkan kedua-dua kes rayuan dan rayuan SDPPSB didengar bersama di hadapan panel Mahkamah Rayuan yang sama:

(1) Menurut doktrin stare decisis, prinsip umum adalah bahawa Mahkamah Rayuan ('MR') terikat dengan keputusannya sendiri kecuali dalam tiga kes yang disenaraikan dalam *Young v Bristol Aeroplane Co Ltd* [1944] KB 718. Ini adalah: (a) di mana keputusan MR diberikan per incuriam; (b) apabila berhadapan dengan percanggahan keputusan MR yang lepas, atau mahkamah yang mempunyai bidang kuasa setara, Mahkamah boleh memilih yang mana untuk diikuti tanpa mengira sama ada salah satu keputusan yang bercanggah adalah kes terdahulu atau yang kemudian; dan (c) di mana keputusan terdahulunya telah ditolak secara nyata atau dengan implikasi yang perlu ditolak oleh Mahkamah Persekutuan, atau sekiranya keputusannya sebelum ini

tidak dapat dipertahankan dengan keputusan Mahkamah Persekutuan (lihat perenggan 53).

(2) Melainkan mana-mana dari tiga pengecualian dalam kes *Young v Bristol Aeroplane* terpakai di dalam kes ini, keputusan mahkamah ini dalam rayuan ini akan mengikat prosiding rujukan tanah SDPPSB dan rayuan SDPPSB. Oleh itu, hak undang-undang PGB sebagai jurubayar dalam prosiding rujukan tanah dan rayuan tersebut akan terjejas oleh keputusan dalam rayuan ini. Sekiranya diputuskan dalam rayuan ini bahawa seorang pembayar yang tidak memfailkan borang N tidak mempunyai hak untuk intervensi dalam prosiding rujukan tanah, maka rayuan SDPPSB haruslah dibenarkan dan keputusan Mahkamah Tinggi dibatalkan. Ianya akan menjadi kesan sekiranya rayuan ini memutuskan sebaliknya (lihat perenggan 55–57).

(3) Memandangkan keputusan dalam rayuan ini akan mengikat rayuan SDPPSB, PGB akan mengalami ketidakadilan sekiranya permohonan intervensinya tidak dibenarkan. PGB sebagai jurubayar akan mengalami implikasi kewangannya di dalam prosiding rujukan tanah SDPPSB sekiranya dinafikan daripada didengar di dalam prosiding tersebut (lihat perenggan 58–62).

(4) Kehadiran PGB di hadapan mahkamah ini adalah perlu untuk memastikan bahawa perkara rayuan ini — iaitu, sama ada seorang pembayar yang tidak memfailkan Borang N boleh intervensi dalam prosiding rujukan tanah di Mahkamah Tinggi — boleh ditentukan dan diadili secara berkesan dan sepenuhnya. Adalah adil dan sesuai untuk PGB dimasukkan sebagai intervener di dalam rayuan ini (lihat perenggan 63–64).]

Cases referred to

Amgeneral Insurance Bhd v Sa'Amran a/l Atan & Ors and other appeals [2022] 5 MLJ 825; [2022] 8 CLJ 175, FC (refd)

Arab Malaysia Merchant Bank Bhd v Dr Jamaludin bin Dato' Mohd Jarjis [1991] 2 MLJ 27; [1991] 1 CLJ Rep 19, SC (refd)

Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors [2011] 1 MLJ 721; [2010] 7 CLJ 917; [2011] 1 AMR 325, FC (refd)

Dalip Bhagwan Singh v PP [1998] 1 MLJ 1; [1997] 4 CLJ 645; [1997] 4 AMR 4029, FC (refd)

Gurtner v Circuit [1968] 1 All ER 328, CA (refd)

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52; [1968] 1 LNS 96, FC (refd)

Sime Darby Plantation Bhd v Pentadbir Tanah Daerah Klang (Tenaga Nasional

Bhd, intervener) [2023] MLJU 769, HC (refd)
Spicon Products Sdn Bhd v Tenaga Nasional Bhd & Anor [2022] 2 MLJ 721; [2022] 4 CLJ 195; [2022] AMR 228, FC (refd)
Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals [2020] 2 MLJ 721; [2018] 4 CLJ 285, FC (refd)
Young v Bristol Aeroplane Co Ltd [1944] KB 718, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 69(1)
Land Acquisition Act 1960 s 3(1)(b), Form N
Rules of Court 2012 O 15 r 6(2)(b)
Rules of the Court of Appeal 1994 r 4
Rules of the High Court 1980 (repealed by Rules of Court 2012) O 15 r 6, r 6(2)

Appeal from: *Sime Darby Plantation Bhd v Pentadbir Tanah Daerah Klang (Tenaga Nasional Bhd, intervener)* [2023] MLJU 769 (High Court, Shah Alam)

Steven Thiru (with David Mathew, David Ng Yew Kiat and Leah Samuel) (Steven Thiru & Sudhar Partnership) for the appellant.
Raneesha Thayalan (with Isabella Cheah Chooi Mun) (Zain & Co) for the first respondent.
Mohd Abdul Hakim Mohd Ali (Negeri Selangor State Legal Advisor's Office) for the second respondent.
Maximilium Tai Kim Sen (with Razeena Rahumathullah) (Moideen & Max) for the proposed intervener.

Faizah Jamaludin J:

INTRODUCTION

[1] This is an application by the proposed intervener, PETRONAS Gas Bhd ('PGB') in a notice of motion dated 17 May 2024 (encl 37), to intervene in this present appeal (Civil Appeal No B-01(1M)-67–02 of 2023) by Tenaga Nasional Bhd ('TNB') against the decision of the Shah Alam High Court dated 12 January 2023 ('TNB appeal').

[2] The parties in this TNB appeal are the appellant, TNB (the paymaster), the first respondent, Sime Darby Plantation Bhd ('SDPB') (the landowner), and the second respondent, Pentadbir Tanah Daerah Klang ('the Land Administrator').

[3] In its notice of motion, PGB sought, inter alia, to intervene and be added as an intervener in this TNB appeal. The appellant supported PGB's

application. Whereas the first respondent opposed it.

[4] After reading the affidavits filed by PGB and SDPB and hearing the submissions of counsel, this court at the hearing of encl 37 on 24 May 2024 allowed PGB's application to intervene. We ordered that PGB be added as an intervener in this TNB appeal. We also ordered that this TNB appeal be heard and disposed by the same Court of Appeal panel as that hearing the SDPPSB appeals (defined below).

[5] The full reasons for our decision are set out in this judgment.

BACKGROUND FACTS

[6] To understand the reason for PGB's application to intervene in this TNB appeal, one must look at the facts relating to the SDPPSB land reference proceedings and the SDPPSB land reference proceedings (both defined below) at the Shah Alam High Court and the appeals in this court — in the TNB appeal and the SDPPSB appeals, respectively.

[7] The Shah Alam High Court had given two contradictory decisions in relation to a paymaster's application to intervene in land reference proceedings. It dismissed TNB's application to intervene in the SDPPSB land reference proceedings. However, it allowed PGB's application to intervene in the SDPPSB land reference proceedings. Both TNB and PGB are paymasters in the respective land acquisitions.

SDPPSB land reference proceedings and TNB appeal

[8] This TNB appeal is an appeal by TNB against the decision of the learned judge dismissing its application to intervene in a land reference proceedings at the Shah Alam High Court (Land Reference No BA-15–3–01 of 2020) ('SDPPSB land reference proceedings') brought by SDPB against the compensation awarded by the Land Administrator for the acquisition of the SDPB scheduled lands (defined below) under the Land Acquisition Act 1960 ('the LAA 1960').

[9] SDPB is the owner of the lands held under Lot 5495, Geran No 47151, and Lot 3657, Geran No 44392, both in Mukim Kapar, Daerah Klang, Selangor (collectively referred to as the 'SDPB scheduled lands').

[10] The SDPB scheduled lands were acquired by the State Authority pursuant to s 3(1)(b) of the LAA 1960 for the purpose of TNB's 132kv transmission line from PMU Port Klang to PMU Kuala Selangor. Section 3(1)(b) of the LAA 1960 states:

3 Acquisition of Land

(1) The State Authority may acquire any land which is needed —

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public;

[11] After an enquiry before him, the Land Administrator awarded SDPB the sum of RM1,149,480 as full compensation for the acquisition of the SDPB scheduled lands.

[12] TNB as the corporation for which the SDPB scheduled lands were acquired by the State Authority is the 'paymaster': it is responsible to pay the compensation awarded to SDPB for the acquisition of the SDPB scheduled lands.

[13] SDPB, dissatisfied with the amount of compensation awarded by the Land Administrator, filed a Form N for the Land Administrator to refer its objection to the High Court for determination. TNB did not file a Form N as it did not object to the amount of compensation awarded by the Land Administrator to SDPB.

[14] The Land Administrator referred SDPB's objection to the High Court at Shah Alam on 31 December 2019.

[15] On 14 December 2021, TNB filed its application to intervene in the SDPPSB land reference proceedings. It filed an amended application on 23 May 2021 following the decision of the Federal Court in *Spicon Products Sdn Bhd v Tenaga Nasional Bhd & Anor* [2022] 2 MLJ 721; [2022] 4 CLJ 195; [2022] AMR 228 ('Spicon Products').

[16] After a full hearing, the learned judge dismissed TNB's application to intervene in the SDPPSB land reference proceedings. She held that based on the Federal Court's decision in *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721; [2018] 4 CLJ 285 ('Unggul Tangkas') it was essential for TNB to have filed a Form N to the Land Administrator if TNB intended to object to the award by the High Court in SDPPSB land reference proceedings. The full reasons for the High Court's dismissal of TNB's application are found in its judgment reported in *Sime Darby Plantation Bhd v Pentadbir Tanah Daerah Klang (Tenaga Nasional Bhd, intervener)* [2023] MLJU 769.

A **[17]** Dissatisfied with the High Court's dismissal of its application to intervene in the SDPPSB land reference proceedings, TNB filed this present appeal.

SDPPSB land reference proceedings and SDPPSB appeals

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[18] In a separate land acquisition exercise, the State Authority acquired lands owned by Sime Darby Plantation (Peninsular) Sdn Bhd ('SDPPSB') (defined below as the SDPPSB scheduled lands) under s 3(1)(b) of the LAA 1960 for the purpose of PGB's gas pipeline for fuel supply from PGU 'Tie-In C Point' in Puchong to the Combined Cycle Gas Power Plant Project Site in Pulau Indah Kuala Langat District, Selangor.

[19] SDPPSB is a wholly owned subsidiary of SDPB. It is the registered owner of four pieces of land held under Lot 18141, Hakmilik GRN334133, D Lot 958, Hakmilik GRN334108, Lot 2601, Hakmilik GRN339741, and Lot 18283, Hakmilik GRN334132, all in Mukim Jugra, Daerah, Kuala Langat, Negeri Selangor (collectively referred to as the 'SDPPSB scheduled lands').

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[20] Following an enquiry before him, the Land Administrator awarded to SDPPSB the sum of RM26,562,783 as full compensation for the acquisition of the SDPPSB scheduled lands.

F **[21]** PGB is the paymaster. The compensation awarded is payable by PGB as the corporation for which the SDPPSB scheduled lands were acquired by the State Authority.

[22] SDPPSB, dissatisfied with the award, filed a written application in G Form N dated 9 November 2021 for the Land Administrator to refer its objection to the award to the High Court for its determination.

[23] Like TNB in relation to the compensation awarded for the SDPB scheduled lands, PGB did not file a Form N as it did not object to the amount H of compensation awarded to SDPPSB by the Land Administrator for the acquisition of the SDPPSB scheduled lands.

[24] The Land Administrator referred SDPPSB's objection to the High Court at Shah Alam on 29 April 2022. The SDPPSB's land references are I registered under Land Reference Nos BA-15–85–04 of 2022, BA-15–86–04 of 2022, BA-15–87–04 of 2022, and BA-15–88–04 of 2022 (referred to collectively as the 'SDPPSB land reference proceedings').

[25] Although PGB did not file a Form N, contrary to her earlier decision in

the SDPPSB land reference proceedings, the learned judge in her decision of 30 January 2024 allowed PGB to intervene in the SDPPSB land reference proceedings. Her Ladyship held that PGB as the paymaster was allowed to intervene in the SDPPSB land reference proceedings following the Federal Court's decision in *Spicon Products*.

[26] Dissatisfied with the High Court's decision in allowing PGB's application to intervene in the SDPPSB land reference proceedings, SDPPSB filed four appeals to this court on 5 February 2024. The appeals are registered under Civil Appeal Nos: B-01(1M)-94–02 of 2024, B-01(1M)-95–02 of 2024, B-01(1M)-96–02 of 2024, and B-01(1M)-97–02 of 2024 (collectively referred to as the 'SDPPSB appeals').

SDPB'S POSITION

[27] SDPB's position is that this court's decision in this TNB appeal will be binding on:

(a) PGB's ability to intervene in the SDPPSB land reference proceedings; and

(b) the SDPPSB appeals against the High Court's decision in allowing PGB to intervene in the SDPPSB land reference proceedings.

[28] Counsel for SDPB submits that the decision of this court in this TNB appeal would clarify the contradictory point of law in the Federal Court's cases of *Unggul Tangkas* and *Spicon Products*.

[29] SDPPSB has filed applications in the Shah Alam High Court to stay the SDPPSB land reference proceedings pending the disposal of this TNB appeal. In its stay application at the Shah Alam High Court, SDPPSB emphasised the importance and the relevance of this TNB appeal — it urged the Shah Alam High Court to grant a stay of the SDPPSB land reference proceedings pending the disposal of this TNB appeal. Counsel for SDPPSB in its written and oral submissions to the High Court in the stay application argued that the decision of this court in this TNB appeal would bind PGB's position in the SDPPSB land reference proceedings and the SDPPSB appeals.

[30] As for the SDPPSB appeals before this court, SDPPSB has not completed filing its records of appeal. Hence, the Registrar of the Court of Appeal has yet to fix a date for the hearing of the SDPPSB appeals.

[31] Notwithstanding its position that this court's decision in this TNB appeal will be binding in: (a) the SDPPSB land reference proceedings; and (b) the SDPPSB appeals, SDPB opposes PGB's request to have the TNB appeal

and the SDPPSB appeals to be heard together before this court. It also opposes PGB's application to intervene in this TNB appeal.

PGB'S APPLICATION TO INTERVENE IN THIS TNB APPEAL

[32] PGB's position is that, given the circumstances and the position taken by SDPPSB, regarding the applicability of this court's decision in the TNB appeal on the SDPPSB land reference proceedings and the SDPPSB appeals, it is compelled to file the notice of motion in encl 37 under O 15 r 6(2)(b) of the Rules of Court 2012 ('the ROC 2012') to move this court to allow it to intervene in this TNB appeal.

[33] PGB argues that it should be allowed to intervene in this TNB appeal so that it will have the opportunity to be heard in this TNB appeal given that this court's decision in this TNB appeal will affect PGB's legal interests in: (a) the SDPPSB land reference proceedings in the High Court; and (b) the SDPPSB appeals in this court.

[34] SDPPSB is a wholly owned subsidiary of SDPB. Counsel for PGB submits that SDPB, as SDPPSB's holding company, has full control of SDPSSB and the way it conducts the SDPPSB land reference proceedings. He says that the inconsistent conduct of SDPB and SDPPSB is mala fide: on the one hand SDPPSB contends that the outcome of this TNB appeal will bind PGB in the SDPPSB appeals and SDPPSB land reference proceedings, and on the other hand, SDPPSB's holding company — SDPB — is vigorously opposing PGB's application to intervene in this TNB appeal and PGB's request to have this TNB appeal and the SDPPSB appeals heard together.

[35] PGB contends that there is no conflict between the Federal Court's decisions in *Unggul Tangkas* and *Spicon Products*. PGB's case is that the High Court was correct in allowing PGB's application to intervene as paymaster in the SDPPSB land reference proceedings. This is because PGB, who is not challenging the compensation awarded by the Land Administrator, is not qualified to file a Form N under the LAA 1960.

[36] TNB, the appellant in this TNB appeal, supports PGB's application in encl 37. TNB's position is that the High Court was wrong to hold that the Federal Court's decision in *Spicon Products* does not apply to TNB's application to intervene in the SDPPSB land reference proceedings.

LAW ON APPLICATION TO INTERVENE BY A NON-PARTY

[37] The Federal Court in *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ

622; [2008] 2 CLJ 121 ('Staghorn') held where a non-party tries to intervene in a proceedings, he must do so under O 15 r 6 of the Rules of the High Court 1980 ('the RHC 1980'). A

[38] The application to intervene under O 15 r 6(2) must be made before judgment: 'at any stage of the proceedings' means before judgment, otherwise the proceedings have concluded and there is no longer a proceeding for the party to intervene in. Abdul Hamid Mohamad CJ delivering the judgment of the Federal Court said: B

> [43] Considering all these authorities, my conclusion is that an application to intervene under O 15 r 6(2) of the RHC 1980 must be before judgment. C
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> [46] Before going any further, it must be remembered that where a non-party tries to intervene in the proceedings, he must necessarily do so under O 15 r 6 of the RHC 1980. There is no other provision under the National Land Code ('the NLC') or any other law or rule for him to rely on. So, like interveners in other civil proceedings, he too must comply with the provisions of O 15 r 6 of the RHC 1980. D

[39] The application for leave to intervene must be supported by an affidavit. The Federal Court held a judge merely decides, based on the affidavit, whether to grant leave to intervene to the non-party. The judge should not make any definite findings on facts. It held: E

> [60] Thirdly, an application for leave to intervene is supported by an affidavit. In other words, in such an application, the judge merely decides on affidavit evidence, whether or not leave should be granted. At that stage, the judge should not make a definite finding of facts which, as envisaged by O 15 r 6 of the RHC 1980, will and can only be made after all evidence has been adduced in the trial which will follow subsequently. F

[40] The Federal Court further held that in an application to intervene, the principles laid down in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52; [1968] 1 LNS 96 ('Pegang Mining') are applicable and all the requirements of O 15 r 6(2) of the RHC 1980 must be satisfied, provided there was an existing proceeding for the applicant to intervene. G H

[41] In *Pegang Mining*, the Privy Council held that one of the principal objects of the rule that gives courts jurisdiction to add a party to an action is to prevent injustice being done to that person by not giving him the right to be heard. Lord Diplock delivering the judgment of the board said at p 55G and p 56A of [1969] 2 MLJ 52: I

> The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. *In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a*

A *person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard*. To achieve this object calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.

B ... While their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between 'legal' and 'commercial' interests helpful. *A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject*
C *matter of the action be directly affected by any order which may be made in the action?* (Emphasis added.)

LAW ON APPLICATION TO INTERVENE AT THE APPELLATE STAGE

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[42] In respect of a non-party's application to intervene at the appellate stage, the law is settled that the appellate courts have the power to consider an application to intervene at the appellate stage.

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[43] For the Court of Appeal, the power is derived pursuant to O 15 r 6(2)(b) of the ROC 2012 read together s 69(1) of the Courts of Judicature Act 1964 ('the CJA 1964'), and r 4 of the Rules of the Court of Appeal 1994 ('the RCA 1994').

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[44] The Privy Council in *Pegang Mining* held that the Federal Court has the power to add an additional party to an appeal. Lord Diplock held:

> The Federal Court has the same power to add an additional party to an appeal as the High Court has to add a party to an action.

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[45] The Federal Court in *Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors* [2011] 1 MLJ 721; [2010] 7 CLJ 917; [2011] 1 AMR 325 (FC) ('Chong
H Fook Sin') held:

> [23] The law in respect of evaluating intervener applications at first instance had been laid down by the Privy Council in *Pegang Mining Company Ltd v Choong Sam & Ors* [1969] 2 MLJ 52; [1968] 1 LNS 96.
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> I [24] The decision in *Pegang Mining* was adopted by the then Supreme Court in *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344.
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> ...
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> [30] Based on the foregoing provisions, we would say that it stands to reason that:

(a) the COA does have jurisdiction/power to determine an intervener application;

(b) the material provision is O 15 r 6(2)(b) of the RHC read with r 4 of the RCA; and

(c) the test entrenched in that provision must, in our view, necessarily be moulded (*mutatis mutandis*) to suit the circumstances of the Court of Appeal.

[31] On that footing, it is our judgment that the test of 'legal interest' would still be applicable. However, the legal interest in issue must be an interest in the subject matter of the appeal before the COA.

[32] It would be observed that in some cases, the subject matter of the appeal is the same as the subject matter in the High Court. In such cases, the legal interest would be identical for both.

[46] Since the Federal Court's decisions in *Staghorn*, *Chong Fook Sin*, and *Tohtonku*, the RHC 1980 had been replaced by the ROC 2012.

(a) O 15 r 6(2)(b) ROC 2012 reads:

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —

(b) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(c) order any of the following persons to be added as a party, namely —

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(d) but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(a) s 69(1) of the CJA 1964, as amended by the Court of Judicature (Amendment) Act 2020 (Act A1621), reads:

(1) Appeals to the Court of Appeal shall be by way of re-hearing, and in relation to such appeals the Court of Appeal shall have all powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court

A or through a remote communication technology, by affidavit, or by deposition taken before an examiner or commissioner.

(b) r 4 of the RCA 1994, as amended by the Rules of Court of Appeal (Amendment) 2012 (PU(A) 234/2012, reads:

B Where no other provision is made by any written law or by these Rules, the procedure and practice in the Rules of Court 2012 [PU(A) 205/2012] shall apply mutatis mutandis.

C ISSUE: SHOULD PGB BE ALLOWED TO INTERVENE IN THIS APPEAL?

[47] As held by the Privy Council in *Pegang Mining*, the principal object of the rule enabling a court to allow a non-party to intervene in a proceeding is 'to enable the Court to prevent injustice being done to a person whose rights will D be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard'.

[48] The Supreme Court in *Arab Malaysia Merchant Bank Bhd v Dr Jamaludin bin Dato' Mohd Jarjis* [1991] 2 MLJ 27; [1991] 1 CLJ Rep 19 E ('AMMB v Jamaludin Jarjis'), in allowing the application for leave to intervene under O 15 r 6 of the RHC 1980 said:

F It was held by the Privy Council in the *Pegang Mining Co Ltd v Choong Sam & Ors* [1973] 1 MLJ 135; [1973] CLJU 107; [1973] 1 LNS 107 case that *one of the principal objects of O 16 r 11 of the former Rules of the Supreme Court 1957, is to enable the Court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard*. It must be noted that the Privy Council in that case added that to achieve that object calls for a flexibility of approach which G made it undesirable in that case, in which the facts are unique, to attempt to lay down any proposition which could be applicable to all cases. Our present O 15 r 6 of the Rules of the High Court 1980, which replaced the former O 16 r 11 of the Rules of the Supreme Court 1957, is in pari materia with O 15 r 6 of the UK Supreme Court Practice.

H ...

One of the class of cases covered by the said rule, which allows intervention by persons not parties, is where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly. *The ambit of this class has been materially* I *widened by the decision of the UK Court of Appeal in Gurtner v Circuit* [1968] 1 All ER 328*, the effect of which is to include any case in which the intervener is directly affected not only in his legal rights but in his pocket*. (Emphasis added.)

[49] Based on the Supreme Court's decision in *AMMB v Jamaludin Jarjis*, in

considering PGB's application to intervene in this TNB appeal, the question for this court is whether PGB is a person whose proprietary or pecuniary rights are directly affected by the outcome of this TNB appeal? Or in plain language of Lord Denning MR in the English Court Appeal case of *Gurtner v Circuit* [1968] 1 All ER 328 (cited with approval in *AMMB v Jamaludin Jarjis*) will PGB be directly affected by the decision in this TNB appeal — not only its legal rights but its pockets?

Will PGB's legal rights be affected by the decision in this TNB appeal?

[50] What is the subject-matter of this TNB appeal? It is whether a paymaster — who did not object to the compensation awarded by the Land Administrator and who for this reason did not file a Form N — may intervene in a land reference proceedings brought by the landowner who objected to the amount of compensation awarded.

[51] As stated earlier in this judgment, TNB is the paymaster in this TNB appeal and the SDPPSB land reference proceedings before the High Court, and PGB is the paymaster in the SDPPSB appeals before this court and in the SDPPSB land reference proceedings before the High Court.

[52] However, the Shah Alam High Court gave polar opposite decisions on the same question of whether a paymaster who did not file a Form N can intervene in land reference proceedings. In the SDPPSB land reference proceedings, TNB was not allowed to intervene following the Federal Court's decision in *Unggal Tangkas*: hence, this appeal by TNB. But in the SDPPSB land reference proceedings, PGB was allowed to intervene following the Federal Court's decision in *Spicon Products*: hence, the appeals by SDPPSB in the SDPPSB appeals.

[53] Pursuant to the doctrine of stare decisis, the general rule is that the Court of Appeal is bound by its own decisions, save for the three exceptions listed in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 ('Young v Bristol Aeroplane'): see *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1; [1997] 4 CLJ 645; [1997] 4 AMR 4029 (FC) ('Dalip Bhagwan Singh'). The three exceptions are:

(a) where the decision of the Court of Appeal was given *per incuriam*;

(b) when faced with a conflict of past decisions of the Court of Appeal, or a court of co-ordinate jurisdiction, the court may choose which to follow irrespective of whether either of the conflicting decisions is an earlier case or a later one; and

A (c) where its previous decision has been expressly or by necessary implication overruled by the Federal Court, or its previous decision cannot stand with a decision of the Federal Court.

B **[54]** The exceptions to this general rule were explained by the Federal Court in *Amgeneral Insurance Bhd v Sa'Amran a/l Atan & Ors and other appeals* [2022] 5 MLJ 825; [2022] 8 CLJ 175.

C **[55]** Therefore, unless the decision of this court in this TNB appeal, falls within one of the exceptions set out in *Young v Bristol Aeroplane*, our decision in this TNB appeal will be binding on this court in the SDPPSB appeals and the High Court in the SDPPSB land reference proceedings.

D **[56]** Thus, on the primary question of whether PGB's legal rights will be affected by our decision in this TNB appeal, our answer is yes. As our decision in this TNB appeal will be binding on the SDPPSB appeals and the SDPPSB land reference proceedings, PGB's legal rights as a paymaster, in the said appeals and the land reference proceedings, will be affected by this court's decision in this TNB appeal.

E **[57]** PGB became a party in the SDPPSB land reference proceedings because the High Court allowed its application to intervene under O 15 r 6(2)(b) of the ROC 2012. Below is an illustration of how PGB's rights will be affected by the decision in this TNB appeal:

F (a) first scenario:

G If this court decides in this TNB appeal that a paymaster who did not file a Form N *does not* have the right to intervene in land reference proceedings in the High Court, this court must allow the SDPPSB appeals and overturn the High Court's decision in allowing PGB to intervene in the SDPPSB land reference proceedings. PGB would, therefore, no longer have the right to intervene in the SDPPSB land reference proceedings.

(b) second scenario:

H If this court decides in this TNB appeal that a paymaster who did not file a Form N *does* have the right to intervene in land reference proceedings in the High Court, this court must dismiss the SDPPSB appeals and affirm the High Court's decision. PGB's right to intervene in the SDPPSB land reference proceedings would, therefore, remain.

I *Will injustice be done to PGB?*

[58] Will injustice be done to PGB if this court were to proceed to adjudicate the matter in dispute in this TNB appeal without allowing PGB to intervene? In our view, the answer is yes.

[59] Even though our decision in this TNB appeal will directly affect PGB's rights in the SDPPSB appeals, PGB would not have the opportunity to address this court during the hearing of the SDPPSB appeals on the subject matter. This is because our decision in this TNB appeal is binding on this court in the SDPPSB appeals, except if the decision falls within one of the exceptions in *Young v Bristol Aeroplane*.

Will PGB's pockets as paymaster be affected?

[60] On the question of whether PGB's pockets as a paymaster in the SDPPSB land reference proceedings be affected by the decision of this court in this TNB appeal, our answer is yes.

[61] This is because the amount of compensation that PGB would have to pay SDPPDB for the lands acquired will be determined by the High Court at the SDPPSB land reference proceedings. Who are the parties to the SDPPSB land reference proceedings? It is SDPPSB — the owner of the lands acquired for PGB, and the Land Administrator.

[62] Regardless of whether PGB is allowed to intervene in the SDPPSB land reference proceedings, its pockets will be directly affected by the amount of compensation ordered by the High Court to be paid to the SDPPSB. This is because PGB must pay SDPPSB the amount of compensation decided by the High Court in the SDPPSB land reference proceedings. If the High Court decides that a higher amount of compensation than that awarded by the land administrator must be paid for the SDPPSB lands acquired, PGB must pay SDPPSB the higher amount of compensation. But if the High Court decides the amount awarded by the Land Administrator is adequate compensation for the lands acquired, PGB must pay SDPPSB the amount awarded by the Land Administrator.

DECISION

[63] Accordingly, for these reasons, and in light of the conflicting decisions of the Federal Court in *Unggul Tangkas* and *Spicon Products*, we find that PGB is a person whose presence before this court is necessary to ensure that the subject matter of this TNB appeal ie, whether a paymaster who did not file a Form N may intervene in land reference proceedings at the High Court, may be effectually and completely determined and adjudicated upon.

[64] We, therefore, find that it just and convenient for PGB to be added as an intervener in this TNB appeal.

[65] PGB's notice of motion in encl 37 in terms of prayers (a), (b) and (c) are

allowed. In respect of prayer (d), we order that this TNB appeal be heard and disposed of together with the SDPPSB appeals by the same panel of the Court of Appeal.

[66] Costs to follow the event.

PGB's intervener application allowed; and both the instant appeal and the SDPPSB appeal to be heard together by the same Court of Appeal panel.

Reported by Ashok Kumar